GOVERNOR'S OFFICE

FACT SHEET

ANTI-CORRUPTION REFORM PACKAGE

Code of Public Ethics and Accountability

For Alabama, the new Code of Public Ethics and Accountability introduces a radically different approach to the regulation of gifts, travel, meals, and entertainment for public officials and employees. Under current law, the general rule is that **ALL** gifts, travel, meals, and entertainment for public officials and employees are permissible so long as the purpose of such gift is not to influence an official action by the public official/employee. Further, Alabama's weak current law only requires reporting of expenditures over $250 per day. Under the new Code of Public Ethics and Accountability, the general rule is that **NO** gift may be accepted unless it falls within one of the few exceptions that are customary across most states (and the federal government) with strong ethics laws. Further, the new code will require lobbyists and principals to report **ALL** expenditures paid for a public official/employee, including any meals and hospitality.

NEW GIFT RULES

Current law: Everything goes except bribery.
Current law on gifts is almost totally permissive. It allows gifts, travel, meals, and entertainment of *unlimited* value[1] from *any* person, including lobbyists, contractors, and others seeking official government action, *unless* given "for the purpose of influencing official action."

The New Code: Nothing goes unless expressly allowed.
Rather than allowing everything unless prohibited, the new code prohibits gifts, travel, meals, and entertainment provided by others unless expressly and specifically allowed under one of a handful of authorized categories.

New General Rule
Unless specifically authorized in the Code, public officials and public employees may not solicit or accept any "thing of value" that is:

- Given for the purpose of influencing official action;
- Given because of the person's official position; or
- Given for *any* reason from a "restricted source" (a lobbyist registered to lobby the public official/employee's agency and the lobbyist's principal or any other person with an interest in

[1] The Ethics Commission has taken the position that gifts to public officials/employees are limited to seasonal gifts valued at $100 or less. It is true that such gifts are excluded from the definition of "thing of value" and are therefore permissible. But the letter of the law does not ban gifts over $100, unless given for the purpose of influencing official action. Therefore, a court may conclude that a public official/employee may accept seasonal gifts under $100 *and any* gifts over $100, as long as they are not given for the purpose of influencing official action.

official action by the public official/employee or his/her agency, including contractors, vendors, and regulated businesses).

Authorized Gifts
A thing of value is permissible only if it clearly fits within one of the following customary authorized categories and is not given for the purpose of influencing official action. Every thing of value[2] must be fully disclosed on a lobbyist's or principal's quarterly report. The authorized gifts are:

- o Anything under $25 (but capped at $100/year from any one person).
- o Anything, regardless of value, from a family member, and anything from a personal friend who is not also a "restricted source"
- o Actual and necessary transportation and lodging, and incidental hospitality in connection with a specifically authorized function (see "Travel" section below)

NEW TRAVEL RULES

Current law expressly allows public officials/employees to accept unlimited hospitality, meals, entertainment (including tickets to social or sporting events) transportation and lodging in connection with a purely social occasion. The New Code does away with this.

Current law only requires reporting of expenditures over $250 per day. The New Code will require lobbyists and principals to report ALL travel expenditures paid for a public official/employee, including any meals and hospitality.

Under the New Code, public officials/employees may only accept the provision of transportation and lodging in connection with the following authorized functions:

- o **A national, regional, or state convention or conference** of any organization to which the public official's/employee's government pays membership dues (Ex. National Governors' Association, National Conference of State Legislatures).
- o **Educational Function**, strictly defined as a meeting, event, or activity that meets all of the following criteria:
    - ▪ The function is organized around a formal program or agenda of educational or informational sessions or speeches concerning matters within the scope of the participants' official duties or other matters of public policy, economic development or trade, ethics, government services or programs, or government operations.

[2] Some items are excluded from the definition, so they are not required to be reported. These exclusions include (1) greeting cards and other items with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies; (2) campaign contributions reported under the FCPA; (3) Loans, commercial discounts, and similar benefits available to the general public.

        - The function is held within the State of Alabama, or if the function is predominantly attended by participants from other states, the function is held within the continental United States.

        - Taking into account the totality of the program or agenda, the function could not reasonably be perceived as a purely social or sporting event.

    - **Economic Development Mission.** Any function reasonably and directly related to the advancement of a specific, concrete, and good-faith economic development or trade promotion objective. (<u>**This is a much stricter standard to qualify as an economic development mission than the current code.)**</u>

    - **Official Speaking Engagements.** Any function at which the public official or public employee is scheduled to **meaningfully participate** in <u>**his or her official capacity either in the exercise of official duties**</u> <u>**or in the interest of the public official or public employee's agency**</u>. A public official or public employee **meaningfully participates if the public official or public employee delivers a speech, participates in a debate, panel discussion, or similar forum, or presents an award or other recognition.**

    - **Political Campaign Events.** For active participation in political management or in political campaigns where transportation, lodging, meals, or entertainment is provided by a political party, a party caucus, or a campaign (ex. Republican/Democrat National Convention, Annual Party Dinner, etc.)

Hospitality in the form of food and beverages and entertainment <u>**incidental**</u> to one of the above authorized functions may be accepted only if:

    - The provider is the sponsor of the function.

    - All participants are entitled to the same hospitality, and

    - The hospitality accounts for less than 50 percent of the duration of the function.

    - Permissible hospitality does not include gambling as defined by Section 13A-12-20(4) or any other activity that would be illegal if conducted within the State of Alabama.

    - Permissible hospitality does not include entertainment <u>**collateral to**</u> (as opposed to incidental to) the function. (Example: Musical entertainment during an evening reception at a national conference would be acceptable, but tickets to an NFL game during the conference would not be).

Functions Pre-Authorized by the Ethics Commission. The New Code creates a system whereby a public official or employee, or the sponsor of an event, may submit the event to the Ethics Commission for pre-authorization. If the Ethics Director issues a determination that the event is an authorized function under the definitions above, then public officials/employees will be protected for accepting associated transportation, lodging, meals, etc. in connection with the event.

Effective Date

- This bill will be effective January 1, 2011.

124472-1 : n : 12/01/2010 : JLB / th LRS2010-4929

SYNOPSIS: This bill would substantially amend the Alabama Code of Ethics.

This bill would clarify and revise the definitions of certain terms and add new terms and definitions.

This bill would provide for: Revised rules concerning the solicitation and acceptance of gifts, meals, travel or reimbursement for travel expenses, and other things of value by public officials and public employees; mandatory quarterly reporting by registered lobbyists of all things of value provided to and all financial transactions with public officials, public employees, and the members of their household; and mandatory disclosure by public officials and public employees of their contractual arrangements.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Code of Ethics, to amend Sections 36-25-1, 36-25-2, 36-25-5, 36-25-7, 36-25-9, 36-25-14, and 36-25-19, of the Code of Alabama 1975, to clarify and revise the definition of certain terms and add new terms and definitions; to further revise the legislative findings and declarations and purposes of the chapter; to amend the procedures for appointment and confirmation of members of the State Ethics Commission and provide for: Revised rules concerning the solicitation and acceptance of gifts, meals, travel or reimbursement for travel expenses, and other things of value by public officials and public employees, mandatory disclosure by public officials and public employees of their contractual arrangements, or those of their family or business, with entities that receive public funds, including government departments, agencies, boards, commissions, and institutions, and mandatory quarterly reporting by registered lobbyists of all things of value provided to and all financial transactions with public officials, public employees, and the members of their household.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The heading of Chapter 25 (commencing with Section 36-25-1) of Title 36 of the Code of Alabama 1975, is amended to read:

"CODE OF PUBLIC ETHICS AND ACCOUNTABILITY F~~OR PUBLIC OFFICIALS, EMPLOYEES, ETC~~."

Section 2. Sections 36-25-1, 36-25-2, 36-25-5, 36-25-7, 36-25-9, 36-25-14, and 36-25-19, of the Code of Alabama 1975, are amended to read as follows:

"§36-25-1.

"Whenever used in this chapter, the following words and terms shall have the following meanings:

"(1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.

"(2) BUSINESS WITH WHICH THE PERSON IS ASSOCIATED. Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business.

"(3) CANDIDATE. ~~This term as used in this chapter shall have the~~ The same meaning ascribed to it in Section ~~17-22A-2~~ 17-5-2.

"(4) COMMISSION. The State Ethics Commission.

"(5) COMPLAINT. Written allegation or allegations that a violation of this chapter has occurred.

"(6) COMPLAINANT. A person who alleges a violation or violations of this chapter by filing a complaint against a respondent.

"~~(7) CONFIDENTIAL INFORMATION. A complaint filed pursuant to this chapter, together with any statement, conversations, knowledge of evidence, or information received~~

~~from the complainant, witness, or other person related to such complaint.~~

"~~(8)~~ (7) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office or position of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs. A conflict of interest ~~shall~~ does not ~~include~~ arise from any of the following:

"a. A loan or financial transaction made or conducted in the ordinary course of business.

"b. An occasional nonpecuniary award publicly presented by an organization for performance of public service.

"c. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence for the personal attendance of a public official or public employee and the spouse of the public official or public employee at a convention or other meeting at which ~~he or she~~ the public official or public employee is scheduled to meaningfully participate in connection with his or her official duties and for which attendance no reimbursement is made by the state.

"d. Any campaign contribution, including the purchase of tickets to~~,~~ or advertisements in journals~~,~~ for political or testimonial dinners, if the contribution is actually used for political purposes and is not given under circumstances from which it could reasonably be inferred that the purpose of the contribution is to substantially influence a public official in the performance of his or her official duties.

"~~(9)~~ (8) DAY. Calendar day.

"~~(10)~~ (9) DEPENDENT. Any person, regardless of his or her legal residence or domicile, who receives 50 percent or more of his or her support from the public official or public employee or his or her spouse or who resided with the public official or public employee for more than 180 days during the reporting period.

"(10) EDUCATIONAL FUNCTION. A meeting, event, or activity that meets all of the following criteria:

"a. The function is organized around a formal program or agenda of educational or informational speeches, debates, panel discussions, or other presentations concerning matters within the scope of the participants' official duties or other matters of public policy, economic development or trade, ethics, government services or programs, or government operations.

"b. The function is held within the State of Alabama, or if the function is predominantly attended by participants from other states, the function is held within the continental United States.

"c. Taking into account the totality of the program or agenda, the function could not reasonably be perceived as having a purely social, recreational, or entertainment purpose, such as a sporting event.

"~~(11) FAMILY MEMBER OF THE PUBLIC EMPLOYEE. The spouse or a dependent of the public employee.~~

"~~(12)~~ (11) FAMILY MEMBER OF ~~THE~~ A PUBLIC OFFICIAL OR PUBLIC EMPLOYEE. The spouse, a dependent, an adult child and his or her spouse, a parent, a spouse's parents, and a sibling and his or her spouse, of the public official or public employee.

"~~(13)~~ (12) GOVERNMENTAL CORPORATIONS AND AUTHORITIES. Public or private corporations and authorities, including but not limited to, hospitals or other health care corporations, established pursuant to state law by state, county, or municipal governments for the purpose of carrying out a specific governmental function. ~~Notwithstanding the foregoing, all employees, including contract employees, of hospitals or other health care corporations and authorities are exempt from the provisions of this chapter.~~

"~~(14)~~ (13) HOUSEHOLD. The public official, public employee, and his or her spouse and dependents.

"~~(15)~~ (14) LAW ENFORCEMENT OFFICER. A full-time employee of a governmental unit responsible for the prevention or investigation of crime who is authorized by law to carry firearms, execute search warrants, and make arrests.

"~~(16)~~ (15) LEGISLATIVE BODY. The Senate of Alabama, the House of Representatives of Alabama, a county commission, city council, city commission, town council, or municipal council or commission, and any committee or subcommittee thereof.

"~~(17)~~ (16) LOBBYING.

"a. The practice of promoting, opposing, or in any manner influencing or attempting to influence ~~the~~ any of the following:

"1. The introduction, defeat, or enactment of legislation before any legislative body~~; opposing or in any manner influencing the~~.

"2. The executive approval, veto, or amendment of legislation~~; or the practice of promoting, opposing, or in any manner influencing or attempting to influence the~~.

"3. The enactment, promulgation, modification, or deletion of ~~regulations~~ rules before any regulatory body~~; provided, however, that~~.

"b. The term does not include providing public testimony before a legislative body or regulatory body or any committee thereof ~~shall not be deemed lobbying~~.

"~~(18)~~ (17) LOBBYIST.

"a. ~~The term lobbyist includes any~~ Any of the following:

1. ~~A person~~ An individual who receives compensation or reimbursement from another person, group, or entity to lobby.

"2. ~~A person~~ An individual who lobbies as a regular and usual part of employment, whether or not any compensation in addition to regular salary and benefits is received.

"3. ~~A person~~ An individual who expends in excess of one hundred dollars ($100) for a thing of value, not including funds expended for the individual's travel, subsistence expenses, and literature, buttons, stickers, publications, or other acts of free speech, during a calendar year to lobby.

"4. A consultant to the state, county, or municipal levels of government or their instrumentalities, in any manner employed to ~~influence legislation or regulation~~ lobby, regardless whether the consultant is paid in whole or part from state, county, municipal, or private funds.

"5. An employee, a paid consultant, or a member of the staff of a lobbyist, whether or not he or she is paid, who regularly communicates with members of a legislative body regarding pending legislation and other matters while the legislative body is in session.

"b. The term ~~lobbyist~~ does not include any of the following:

"1. A ~~member of a legislative body~~ public official on a matter which involves that ~~person's~~ individual's official duties.

"2. ~~A person or attorney~~ An individual rendering professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation, executive action, or rules or regulations, where those professional services are not otherwise connected with legislative, executive, or regulatory action.

"3. Reporters and editors while pursuing normal reportorial and editorial duties.

"4. Any citizen not expending funds as set out above in paragraph a.3. or not lobbying for compensation who contacts a member of a legislative body or other public official or public employee, or gives public testimony on a particular issue, ~~or on particular~~ legislation, or rule or for the purpose of influencing legislation, a rule, or the award of a grant or contract and who is merely exercising his or her constitutional right to communicate with members of a legislative body or a public official or public employee.

"5. ~~A person~~ An individual who appears before a legislative body, a regulatory body, or an executive agency to either sell or purchase goods or services.

"6. ~~A person~~ An individual whose primary duties or responsibilities do not include lobbying, but who may, from time to time, organize social events for members of a legislative body to meet and confer with members of professional organizations and who may have only irregular contacts with members of a legislative body when the body is not in session or when the body is in recess.

"~~(19)~~ (18) MINOR VIOLATION. Any violation of this chapter in which the public official or public employee receives in the aggregate an economic gain in an amount less than two hundred fifty dollars ($250) or the governmental entity has an aggregate economic loss of less than two hundred fifty dollars ($250).

"(19) NONPUBLIC INFORMATION. Information that a public official or public employee gains by reason of his or her government position or office which is privileged or protected from public disclosure by law or which he or she knows or reasonably should know has not been made available to the public.

"(20) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, political committee, or other organization or group of persons.

"(21) PRINCIPAL. A person or business which employs, hires, or otherwise retains a lobbyist. Nothing in this chapter shall be deemed to prohibit a principal from simultaneously serving as his or her own lobbyist.

"(22) PROBABLE CAUSE. A finding that the allegations are more likely than not to have occurred.

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county, or municipal funds. ~~For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income.~~

"(24) PUBLIC OFFICIAL. Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2.

"(25) REGULATORY BODY. A state agency which issues ~~regulations~~ rules in accordance with the Alabama Administrative Procedure Act or a state, county, or municipal department, agency, board, or commission which controls, according to rule or regulation, the activities, business licensure, or functions of any group, person, or persons.

"(26) REPORTING PERIOD. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

"(27) REPORTING YEAR. The reporting official's or employee's fiscal tax year as it applies to his or her United States personal income tax return.

"(28) RESPONDENT. A person alleged to have violated a provision of this chapter and against whom a complaint has been filed with the commission.

"<u>(29) RESTRICTED SOURCE. With respect to a particular public official or public employee, any of the following:</u>

"<u>a. A lobbyist, principal, or other person who is seeking official action by the public official or public employee or his or her agency.</u>

"<u>b. A contractor, vendor, or other person who does business or seeks to do business with the public official or public employee's agency.</u>

"<u>c. A person who conducts activities regulated by the regulatory body to which the public official or public employee belongs.</u>

"<u>d. A person who has interests that may be substantially affected by performance or nonperformance of the public official's or public employee's official duties.</u>

"~~(29)~~ <u>(30)</u> STATEMENT OF ECONOMIC INTERESTS. A financial disclosure form made available by the commission which shall be completed and filed with the commission prior to April 30 of each year covering the preceding calendar year by certain public officials and public employees.

"~~(30)~~ (31) SUPERVISOR. Any person having authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, or discipline other public employees, or any person responsible to direct them, or to adjust their grievances, or to recommend personnel action, if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

"~~(31)~~ (32) THING OF VALUE.

"a. Any gift, benefit, favor, service, gratuity, ~~tickets or passes to an~~ discount, entertainment, free attendance at a social or sporting event ~~offered only to public officials~~ for which there is an admission charge, hospitality, unsecured loan, ~~other than those loans made in the ordinary course of business~~ forbearance, reward, promise of future employment, ~~or~~ honoraria, transportation, lodging, food, beverages, or other item having monetary value, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"b. The term~~, thing of value,~~ does not include any of the following~~, provided that~~ if no particular course of action is required as a condition to the receipt thereof:

"~~1. Campaign contribution.~~

"~~2. Seasonal gifts of an insignificant economic value of less than one hundred dollars ($100) if the aggregate~~

~~value of such gifts from any single donor is less than two hundred fifty dollars ($250) during any one calendar year.~~

"~~3. Hospitality extended to a public official, public employee, and his or her respective household as a social occasion in the form of food and beverages where the provider is present, lodging in the continental United States and Alaska incidental to the social occasion, and tickets to social or sporting events if the hospitality does not extend beyond three consecutive days and is not continuous in nature and the aggregate value of such hospitality in excess of two hundred fifty dollars ($250) within a calendar day is reported to the commission by the provider provided that the reporting requirement contained in this section shall not apply where the expenditures are made to or on behalf of an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any charitable, education or eleemosynary cause of Section 501 of Title 26 of the U.S. Code, and where the public official or public employee does not receive any direct financial benefit. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.~~

"~~4. Reasonable transportation, food and beverages where the provider is present, and lodging expenses in the continental United States and Alaska which are provided in conjunction with an educational or informational purpose,~~

~~together with any hospitality associated therewith; provided, that such hospitality is less than 50 percent of the time spent at such event, and provided further that if the aggregate value of such transportation, lodging, food, beverages, and any hospitality provided to such public employee, public official, and his or her respective household is in excess of two hundred fifty dollars ($250) within a calendar day the total amount expended shall be reported to the commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of the entire expenditure, the date or dates of the expenditure, and the type of expenditure.~~

"~~5. Payment of or reimbursement for actual and necessary expenditures for travel and subsistence of a public official or public employee in connection with an economic development research or trade mission, or for attendance at a mission or meeting in which he or she is scheduled to meaningfully participate, or regarding matters related to his or her official duties, and for which attendance no reimbursement is made by the state; provided, that any hospitality in the form of entertainment, recreation, or sporting events shall constitute less than 25% of the time spent in connection with the event. If the aggregate value of any such hospitality extended to the public employee, public official, and his or her respective household is in excess of two hundred fifty dollars ($250) within a calendar day, the total amount expended for that day shall be reported to the~~

~~commission by the provider. The reporting shall include the name or names of the recipient or recipients, the value of such expenditures, the date or dates of the expenditure, and the type of expenditure.~~

"~~6. Promotional items commonly distributed to the general public and food or beverages of a nominal value.~~

"1. Greeting cards and items with little intrinsic value which are intended solely for presentation, such as plaques, certificates, and trophies.

"2. Loans from banks and other financial institutions on terms generally available to the public.

"3. Opportunities and benefits, including favorable rates, commercial discounts, and free food and beverages available to the public or to all government employees as a class.

"4. Prizes given to competitors in contests or events, including random drawings which are open to the public.

"5. Anything that is paid for by the government or secured by the government under government contract except for tickets or passes to a social or sporting event.

"6. Anything for which the public official or public employee pays full value.

"7. Opportunities and benefits, including favorable rates and commercial discounts, if the same opportunities and benefits are offered on the same terms to any of the following:

"a. Members of a group or class in which membership is unrelated to government employment or office.

"b. Members of an organization, such as an employees' association or agency credit union, in which membership is related to government employment, if the same offer is broadly available to large segments of the public.

"c. Members of any group or class that is not defined in a manner that specifically discriminates among public officials or public employees on the basis of rank or type of official responsibility.

"8. Reduced membership or other fees for participation in organization activities offered to all government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

"~~c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of a personal gift made to a public official or public employee from a spouse, intended spouse, dependent, adult child, sibling, parent, grandparent, uncle, aunt, nephews, nieces or cousins of the public official or public employee, except as otherwise provided by law.~~

"~~d.~~c. Nothing in this chapter shall be deemed to limit, prohibit, or otherwise require the disclosure of gifts through inheritance received by a public employee or public official.

"~~(32)~~ (33) VALUE. ~~The fair market price of a like item if purchased by a private citizen.~~ Fair market value, as measured by the retail cost a private citizen would incur to purchase the thing of value or, if the retail cost cannot be readily ascertained, as reasonably estimated based on the retail cost of similar items of like quality. In the case of a ticket entitling the holder to food and beverages, entertainment, admission to any facility or event, or any other benefit, value means the face value of the ticket or, in the case of a ticket without a face value, the highest cost of a ticket with a face value for the event. The price printed on a ticket to an event may be deemed its face value only if it is also the price at which the issuer offers that ticket for sale to the public.

"§36-25-2.

"(a) The Legislature hereby finds and declares:

"(1) It is essential to the proper operation of democratic government that public officials and public employees be independent and impartial.

"(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

"(3) No public office or position should be used for private gain other than the remuneration provided by law.

"(4) It is important that there be public confidence in the integrity of government.

"(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

"(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist <u>or appear to exist from the perspective of a reasonable person with knowledge of the relevant facts</u>.

"(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve in government. Accordingly, legal safeguards against conflicts of interest shall be so designed as not to unnecessarily or unreasonably impede the service of those men and women who are elected or appointed to do so. An essential principle underlying the staffing of our governmental structure is that its public officials and public employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of public officials and public employees to the public cannot be avoided.

"(c) The Legislature declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to the legislative bodies and to officials of the Executive Branch, their opinions on legislation, on pending governmental actions, and on current issues. To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislative bodies or members of the Executive Branch to take specific actions, either by direct communication to these officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. This chapter shall be liberally construed to promote complete disclosure of all relevant information and to insure that the public interest is fully protected.

"(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest <u>and prudent protections against the appearance of conflicts of interest</u> in public service without creating unnecessary barriers thereto.

"§36-25-5.

"(a) ~~No public official or public employee shall~~ <u>Unless otherwise specifically authorized by law, a public official or public employee may not</u> use or cause to be used his or her official position or office <u>with intent</u> to obtain personal gain for himself or herself, ~~or~~ <u>a</u> family member of the public employee or family member of the public official, or any business with which the person is associated ~~unless the use and gain are otherwise specifically authorized by law~~.

Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the thing of value or the object constituting such personal gain.

"(b) Unless prohibited by the Constitution of Alabama of 1901, nothing herein shall be construed to prohibit a public official from introducing bills, ordinances, resolutions, or other legislative matters, serving on committees, or making statements or taking action in the exercise of his or her duties as a public official. A member of a legislative body may not vote for any legislation in which he or she knows or should have known that he or she has a conflict of interest.

"(c) ~~No~~ A public official or public employee ~~shall~~ may not use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section ~~17-22A-2~~ 17-5-2, ~~which would materially affect his or her financial interest,~~ except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ~~Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.~~

"(d) No person shall solicit a public official or public employee to use or cause to be used equipment, facilities, time, materials, human labor, or other public property for such person's private benefit or business benefit, which would materially affect his or her financial interest, except as otherwise provided by law.

"(e) No public official or public employee ~~shall~~, other than in the ordinary course of business, shall solicit a thing of value from a subordinate or person or business with whom he or she directly inspects, regulates, or supervises in his or her official capacity.

"(f) A conflict of interest shall exist when a member of a legislative body~~,~~ or a public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of, or is an officer or director of any corporation, company, association, ~~or~~ firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation~~; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation~~.

"(g) No public official or a public employee may use or disclose nonpublic information in any way that could result in financial gain, other than his or her regular salary as a public official or public employee, for himself or herself or any other person or business.

"§36-25-7.

"(a) ~~No person shall offer or give to a public official or public employee or a member of the household of a public employee or a member of the household of the public official and none of the aforementioned shall solicit or receive a thing of value for the purpose of influencing official action.~~ For purposes of this section, a thing of value given, offered, solicited, or accepted indirectly includes a thing of value that is either of the following:

"(1) Given with the public official or public employee's knowledge and acquiescence to a family member of the public official or public employee because of the family member's relationship to the public official or public employee.

"(2) Given to any other person on the basis of designation, recommendation, or other specification by the public official or public employee, except for the disposition of perishable items or for payment made to charitable organizations in lieu of honoraria.

"(b) No public official or public employee, ~~shall~~ directly or indirectly, may solicit or ~~receive~~ accept a thing of value for any person, including himself or herself, ~~or~~ for ~~a family member of the public employee or family member of the public official~~ the purpose of influencing official action. No person, directly or indirectly, may offer or give to any public official or public employee a thing of value for the purpose of influencing official action.

"~~(c) No person shall offer or give a family member of the public official or family member of the public employee a thing of value for the purpose of influencing official action.~~

"~~(d)~~ (c) No public official or public employee, ~~shall~~ directly or indirectly, may solicit or ~~receive~~ accept any money in addition to that received by the public official or public employee in an official capacity for advice or assistance on matters concerning the Legislature, lobbying a legislative body, an executive department, or any public regulatory board, commission, or other body of which he or she is a member. Notwithstanding the foregoing, nothing in this section shall be construed to prohibit a public official or public employee from the performance of his or her official duties or responsibilities.

"(d) Except as provided in subsection (e), no public official or public employee, directly or indirectly, may solicit or accept a thing of value from a restricted source or given because of the public official's or public employee's official position. A thing of value is given because of the public official's or public employee's official position if it would not have been solicited or given had the public official or public employee not held the status, authority, or duties associated with his or her official position.

"(e) Subject to subsection (c), a public official and a public employee may accept any of the following:

"(1) A thing of value, other than cash or cash equivalent, that the public official or public employee reasonably and in good faith believes to have a value of less than twenty-five dollars ($25) and a cumulative value from one source during a calendar year of less than one hundred dollars ($100).

"(2) A thing of value given by a family member, regardless of value, under circumstances which make it clear that the gift is motivated by a family relationship.

"(3) A thing of value, regardless of value, given by a friend who is not a restricted source under circumstances which make it clear that the gift is motivated by a personal friendship.

"(4) Waiver, payment of, or reimbursement for actual and necessary transportation and lodging expenses, registration fees, and similar fees in connection with the public official's or public employee's attendance at any of the following functions if no reimbursement is made by the public official's or public employee's agency:

"a. An educational function.

"b. A national, regional, or state convention, conference, symposium, seminar, or similar meeting of an organization to which the state, in the case of a state employee, or a local government, in the case of a local government employe, pays annual dues as a membership requirement.

"c. Any function reasonably and directly related to the advancement of a specific, concrete, and good-faith economic development or trade promotion project or objective.

"d. Any function within the Continental United States at which the public official or public employee is scheduled to meaningfully participate in his or her official capacity either in the exercise of official duties or in the interest of the public official or public employee's agency. A public official or public employee meaningfully participates if the public official or public employee delivers a speech, participates in a debate, panel discussion, or similar forum, or presents a bona fide award or other special recognition.

"e. Any function pre-certified by the Director of the Ethics Commission as a function that meets any of the above criteria.

"(5) Hospitality in the form of entertainment, meals, and other food and beverages incidental to any of the functions listed in subdivision (4), but only if provided by the sponsor of the function, all participants are entitled to the same hospitality, and the hospitality accounts for less than 50 percent of the duration of the function. Hospitality acceptable under this subdivision does not include hospitality that is offered collateral to, rather than as an integral part of, the function. Hospitality also does not include gambling as defined by Section 13A-12-20(4) or any other activity that would be illegal if conducted within the State of Alabama.

"(6) Transportation, lodging, and hospitality provided to the public official or public employee and the public official or public employee's spouse if provided solely on the basis that the public official, public employee, or spouse is an employee of the provider and the receipt of the lodging, transportation, and hospitality is purely incidental to the employment and the public official, public employee, or spouse is receiving it only as the employee of the provider.

"(7) With regard to active participation in political management or in a political campaign, meals, lodging, transportation, and other benefits, including free attendance at related events, when provided by a political party as defined in Section 17-13-40, or a principal campaign committee as defined in Section 17-5-2, or a party legislative caucus.

"§36-25-9.

"(a) Unless expressly provided otherwise by law, no ~~person shall~~ public official or public employee may serve as a member or employee of a state, county, or municipal regulatory board or commission or other body that regulates any business with which ~~he~~ the person is associated. Nothing herein shall prohibit real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate field, or other state-licensed professionals, from serving on any planning ~~boards~~ board or ~~commissions~~

commission, housing ~~authorities~~ authority, zoning board, board of adjustment, code enforcement board, industrial board, utilities board, or a state board~~,~~ or commission.

"(b) All county or municipal regulatory boards, authorities, or commissions currently comprised of any real estate brokers, agents, developers, appraisers, mortgage bankers, or other persons in the real estate industry may allow these individuals to continue to serve out their current term if appointed before December 31, 1991, except that at the conclusion of such term subsequent appointments shall reflect that membership of real estate brokers and agents shall not exceed more than one less of a majority of any county or municipal regulatory board or commission effective January 1, 1994.

"(c) No member of any county or municipal agency, board, or commission ~~shall~~ may vote or participate in any matter in which the member or family member of the member has any financial gain or interest.

"(d) All acts, actions, and votes taken by such local boards and commissions between January 1, 1991, and December 31, 1993, are affirmed and ratified.

"§36-25-14.

"(a) A statement of economic interests shall be completed and filed in accordance with this chapter with the commission no later than April 30 of each year covering the period of the preceding calendar year by each of the following:

"(1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.

"(2) Any person appointed as a public official and any person employed as a public employee at the state, county, or municipal level of government or their instrumentalities who occupies a position whose base pay is fifty thousand dollars ($50,000) or more annually.

"(3) All candidates, simultaneously with the date he or she becomes a candidate as defined in Section ~~17-22A-2~~ 17-5-2, or the date the candidate files his or her qualifying papers, whichever comes first.

"(4) Members of the Alabama Ethics Commission; appointed members of boards and commissions having statewide jurisdiction, ~~(~~but excluding members of solely advisory boards~~)~~.

"(5) All full-time nonmerit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.

"(6) Chief clerks and chief managers.

"(7) Chief county clerks and chief county managers.

"(8) Chief administrators.

"(9) Chief county administrators.

"(10) Any public official or public employee whose primary duty is to invest public funds.

"(11) Chief administrative officers of any political subdivision.

"(12) Chief and assistant county building inspectors.

"(13) Any county or municipal administrator with power to grant or deny land development permits.

"(14) Chief municipal clerks.

"(15) Chiefs of police.

"(16) Fire chiefs.

"(17) City and county school superintendents and school board members.

"(18) City and county school principals or administrators.

"(19) Purchasing or procurement agents having the authority to make any purchase.

"(20) Directors and assistant directors of state agencies.

"(21) Chief financial and accounting directors.

"(22) Chief grant coordinators.

"(23) Each employee of the Legislature or of agencies, including temporary committees and commissions established by the Legislature, other than those employed in maintenance, clerical, secretarial, or similar positions.

"(24) Each employee of the Judicial Branch of government, including active supernumerary district attorneys and judges, other than those employed in maintenance, clerical, secretarial, or other similar positions.

"(b) Unless otherwise required by law, no public employee occupying a position earning less than fifty thousand dollars ($50,000) per year shall be required to file a statement of economic interests. Notwithstanding the provisions of subsection (a) or any other provision of this chapter, no coach of an athletic team of any four-year institution of higher education which receives state funds shall be required to include any income, donations, gifts, or benefits, other than salary, on the statement of economic interests, if the income, donations, gifts, or benefits are a condition of the employment contract. Such statement shall be made on a form made available by the commission. The duty to file the statement of economic interests shall rest with the person covered by this chapter. Nothing in this chapter shall be construed to exclude any public employee or public official from this chapter regardless of whether they are required to file a statement of economic interests. The statement shall contain the following information on the person making the filing:

"(1) Name, residential address, business; name, address, and business of living spouse and dependents; name of living adult children; name of parents and siblings; name of living parents of spouse. Undercover law enforcement officers may have their residential addresses and the names of family members removed from public scrutiny by filing an affidavit stating that publicizing this information would potentially endanger their families.

"(2) A list of occupations to which one third or more of working time was given during previous reporting year by the public official, public employee, or his or her spouse.

"(3) A listing of total combined household income of the public official or public employee during the most recent reporting year as to income from salaries, fees, dividends, profits, commissions, and other compensation and listing the names of each business, including government departments, agencies, boards, commissions, and institutions, and the income derived from such business in the following categorical amounts: less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); ~~or~~ and at least two hundred fifty thousand dollars ($250,000) or more. The person reporting shall also name any business or subsidiary thereof in which he or she or his or her spouse or dependents, jointly or severally, own five percent or more of the stock or in which he or she or his or her spouse or dependents serves as an officer, director, trustee, or consultant where the service provides income of at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); ~~or~~ and at least five thousand dollars ($5,000) or more for the reporting period.

"(4) If the filing public official or public employee, or his or her spouse, has engaged in a business during the last reporting year which provides legal, accounting, medical or health related, real estate, banking, insurance, educational, farming, engineering, architectural management, or other professional services or consultations, then the filing party shall report the number and names of any client of such business which is a government department, agency, board, commission, or institution, and the number of other clients of such business in each of the following categories, and the income in categorical amounts received during the reporting period from the combined number of clients in each category: ~~Electric~~ Government instrumentalities, electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, intrastate transportation companies, pipeline companies, oil or gas exploration companies, or both, oil and gas retail companies, banks, savings and loan associations, loan or finance companies, or both, manufacturing firms, mining companies, life insurance companies, casualty insurance companies, other insurance companies, retail companies, beer, wine or liquor companies or distributors, or combination thereof, trade associations, professional associations, governmental associations, associations of public employees or public officials, counties, and any other businesses or associations that the commission may deem appropriate. Amounts received from combined clients in each category shall be reported in the following categorical amounts: Less than one thousand dollars ($1,000); more than one thousand dollars ($1,000) and less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than twenty-five thousand dollars ($25,000); at least twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); ~~or~~ and at least two hundred fifty thousand dollars ($250,000) or more.

"(5) A listing of any person, business, nonprofit organization, or other entity other than government instrumentalities which the public official or public employee knows or reasonably should know received state, county, or municipal funds, including grants or contracts, during the last reporting year and which employed the filing public official or public employee or a family member of the public official or public employee or to which the public official or public employee, a family member of the public official or public employee, or a business with which the person is or was associated provided services under a personal or professional services contract during the last reporting year.

"~~(5)~~ (6) If retainers are in existence or contracted for in any of the above categories of clients, a listing of the categories along with the anticipated income to be expected annually from each category of clients shall be shown in the following categorical amounts: less than one thousand dollars ($1,000); at least one thousand dollars ($1,000) and less than five thousand dollars ($5,000); ~~or~~ and at least five thousand dollars ($5,000) or more.

"~~(6)~~ (7) If real estate is held for investment or revenue production by a public official, his or her spouse or dependents, then a listing thereof in the following fair market value categorical amounts: Under fifty thousand dollars ($50,000); at least fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); at least one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); at least one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); at least two hundred fifty thousand dollars ($250,000) or more. A listing of annual gross rent and lease income on real estate shall be made in the following categorical amounts: Less than ten thousand dollars ($10,000); at least ten thousand dollars ($10,000) and less than fifty thousand dollars ($50,000); and fifty thousand dollars ($50,000) or more. If a public official or a business in which the person is associated received rent or lease income from any governmental agency in Alabama, specific details of the lease or rent agreement shall be filed with the commission.

"~~(7)~~ (8) A listing of indebtedness to businesses operating in Alabama showing types and number of each as follows: Banks, savings and loan associations, insurance companies, mortgage firms, stockbrokers and brokerages or bond firms; and the indebtedness to combined organizations in the following categorical amounts: Less than twenty-five thousand dollars ($25,000); twenty-five thousand dollars ($25,000) and less than fifty thousand dollars ($50,000); fifty thousand dollars ($50,000) and less than one hundred thousand dollars ($100,000); one hundred thousand dollars ($100,000) and less than one hundred fifty thousand dollars ($150,000); one hundred fifty thousand dollars ($150,000) and less than two hundred fifty thousand dollars ($250,000); and two hundred fifty thousand dollars ($250,000) or more. The commission may add additional business to this listing. Indebtedness associated with the homestead of the person filing is exempted from this disclosure requirement.

"(c) Filing required by this section shall reflect information and facts in existence at the end of the reporting year.

"(d) If the information required herein is not filed as required, the commission shall notify the public official or public employee concerned as to his or her failure to so file and the public official or public employee shall have 10 days to file the report after receipt of the notification. The commission may, in its discretion, assess a fine of ten dollars ($10) a day, not to exceed one thousand dollars ($1,000), for failure to file timely.

"(e) A person who intentionally violates any financial disclosure filing requirement of this chapter shall be subject to administrative fines imposed by the commission, or shall, upon conviction, be guilty of a Class A misdemeanor, or both.

"(f) Any person who unintentionally neglects to include any information relating to the financial disclosure filing requirements of this chapter shall have 90 days to file an amended statement of economic interests without penalty.

"§36-25-19.

"(a) Every person registered as a lobbyist pursuant to Section 36-25-18 and every principal employing or contracting for the services of any lobbyist shall file with the commission a report in a form provided by the commission pertaining to the activities set out in that section. The report shall be filed with the commission no later than January 31, April 30, July 31, and October 31 for each preceding calendar quarter, and contain, but not be limited to, the following information:

"(1) ~~The cost of those items excluded from the definition of a thing of value which are described in Section 36-25-1(32)b. and which are expended within a 24-hour period on a public official, public employee, and members of his or her respective household in excess of two hundred fifty dollars ($250) with the name or names of the recipient or~~

~~recipients and the date of the expenditure.~~ An itemized list of each thing of value provided to a public official or public employee and any member of the household of a public official or public employee and, in the case of an elected official, to any family member of the elected official, including the date the thing of value was provided, a description of the thing of value, its value, the name or names of the recipient or recipients, and, in the case of household members, the name of the related public official or public employee.

"(2) The nature and date of any financial transaction between the public official, candidate, or member of the household of such public official or candidate and the lobbyist or principal ~~of a value in excess of five hundred dollars ($500)~~ in the prior quarter, excluding those financial transactions which are required to be reported by candidates under the Fair Campaign Practices Act as provided in Chapter ~~22A~~ 5 (commencing with Section ~~17-22A-1~~ 17-5-1) of Title 17.

"(3) A detailed statement showing the exact amount of any loan given or promised to a public official, candidate, public ~~official~~ employee, or family member of a public official, candidate, or public employee ~~candidate~~.

"(4) A detailed statement showing any direct business association or partnership with any public official, public employee, candidate, or members of the household of such public official, public employee, or candidate; provided, however, that campaign expenditures shall not be deemed a business association or partnership.

"(b) Any person not otherwise deemed a lobbyist pursuant to this chapter who negotiates or attempts to negotiate a contract, sells or attempts to sell goods or services, or engages or attempts to engage in a financial transaction with a public official or public employee in ~~their~~ his or her official capacity and who ~~within a calendar day expends in excess~~ provides any thing of ~~two hundred fifty dollars ($250) on such public employee, public official, and his or her respective household~~ value to the public official or public employee or a family member of the public official or public employee shall file a detailed quarterly report ~~of the expenditure with the commission~~ pursuant to this section.

"~~(c) Any other provision of this chapter to the contrary notwithstanding, no organization whose officer or employee serves as a public official under this chapter shall be required to report expenditures or reimbursement paid to such officer or employee in the performance of the duties with the organization.~~"

Section 3. On January 1, 2011, all prior advisory opinions of the commission in conflict with this chapter as amended by the act adding this language are superseded. Any person who relied on advisory opinion issued before January 1, 2011, shall be protected with respect to conduct occurring before that date in reliance on the prior advisory opinion, but shall be subject to this chapter, notwithstanding the prior advisory opinion, with respect to all conduct occurring thereafter.

Section 4. This act shall become effective January 1, 2011.